Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended	CC Docket No. 96-91

COMMENTS

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SUMMARY

MCI generally agrees with the basic conclusions reached by the Commission in connection with the definition of relevant product and geographic markets, including its tentative determination that, for market power analyses, the interstate, interexchange marketplace should be viewed as one national market. MCI further agrees that, absent evidence of competitive failings, there is no need to evaluate the market in terms of products. What is essential is that the Commission equip itself with the analytical tools necessary to evaluate the nature and extent of the Bell Operating Companies' (BOCs') market power in connection with their entry into the interstate, interexchange market.

Because Local Exchange Carriers (LECs) continue to possess local bottleneck control within their respective service areas, and because that control can be exploited outside those areas, the Commission should continue to require that LECs establish separate affiliates if they wish to be regulated as non-dominant. However, for BOCs, the standard must be more stringent, given the greater wounds they can inflict on competition by cross-subsidization and other anti-competitive conduct. Specifically, for BOC out-of-region interexchange services, the Commission must require that their offerings be made only via separate affiliates and, then, only under dominant carrier regulation.

Finally, MCI is hopeful that any tension that may exist between geographic rate averaging and rate integration requirements, on the one hand, and the need to develop and maintain an effective competitive environment, on the other hand, can be

accommodated. These two important policy goals must continue to "peacefully co-exist," as they have in the past, so that consumers can realize affordable rates while carriers can effectively compete for business in the marketplace. This means that carriers should be allowed to price their services at economic cost while continuing to fulfill their geographic and rate integration obligations. Above all else, however, the overriding public interest in further developing competitive marketplaces must prevail over any lesser policy objectives.

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COMMENTS

MCI Telecommunications Corporation (MCI) respectfully submits these comments in response to the Commission's "Notice of Proposed Rulemaking" (FCC 96-123), released March 25, 1996. Therein, the Commission seeks comment on a number of matters, including certain proposals arising from its review of the state of competition in the interstate, interexchange marketplace and the recent, significant modifications made to the Communications Act of 1934.[1]

The Commission has adopted a two-phased approach to address these matters. The first phase involves the definition of relevant product and geographic markets, the provision of "out-of-region" interstate, interexchange services by Local Exchange Carriers (LECs), including the Bell Operating Companies (BOCs), and issues relating to geographic rate averaging and rate integration. Comments

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (hereinafter referred to as "the new law" or the "1996 Act").

and Reply Comments, respectively, are due on these matters on April 19 and May 3, 1996.[2]

BACKGROUND AND SUMMARY OF POSITION

This proceeding arises from pre-legislation commitments made by the Commission to evaluate competition in the interstate, interexchange market, which it last did on a major scale in August 1991,[3] and which it did most recently in connection with the deregulation of AT&T Corp. (AT&T) in connection with its provision of domestic interstate, interexchange services.[4] As the 1996 Act empowers the Commission to take still additional, substantial deregulatory measures -- if the record warrants its making

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[2] The "second phase" of this proceeding involves the application of regulatory forbearance, as provided for in the Act, to non-dominant carrier tariffing; so-called "pricing issues;" the bundling of transmission services and customer premises equipment (CPE); and certain other issues relating to contract-tariffs. Comments and Reply Comments, respectively, are due on these matters on April 25 and May 24, 1996.

[3] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880 (1991); Order, 6 FCC Rcd 7255; Memorandum Opinion and Order, 6 FCC Rcd 7569 (1991); Memorandum Opinion and Order, 7 FCC Rcd 2677 (1992); Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 2659 (1993); Second Report and Order, 8 FCC Rcd 3668 (1993); Memorandum Opinion and Order, 8 FCC Rcd 5046 (1993); Memorandum Opinion and Order on Reconsideration, 10 FCC Rcd 4562 (1995).

[4] See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, FCC 95-427, rel. October 23, 1995. AT&T is still regulated -- and quite properly so -- as "dominant" in connection with its furnishing of international services because it controls essential "bottleneck" facilities, namely, cables and cable-heads, essential to the ability of its competitors to compete against it.

the requisite statutory findings -- the Commission now is considering these in the two phases of this proceeding.

Thus, in this phase, the Commission intends to reevaluate its definition of relevant product and geographic markets, which it first established in Competitive Carriers,[5] and subsequently modulated in order to accommodate AT&T's deregulation in 1991.[6] It also is looking to reconsider the "separation requirements" now imposed as a condition of "non-dominant" regulatory treatment for LECs, including the BOCs, who undertake to provide "out-of-region" interstate, interexchange services. Finally, in this first phase, the Commission is addressing

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[5] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking (Competitive Carrier Notice), 77 FCC 2d 308 (1979); First Report and Order (First Report), 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, 47 Fed. Reg. 17308 (1982); Second Report and Order (Second Report), 91 FCC 2d 59 (1982), recon. denied, 93 FCC 2d 54 (1983); Third Report and Order (Third Report), 48 Fed. Reg. 46791 (1983); Fourth Report and Order (Fourth Report), 95 FCC 2d 554 (1983), vacated, AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order (Fifth Report), 98 FCC 2d 1191 (1984); Sixth Report and Order (Sixth Report), 99 FCC 2d 1020 (1985), vacated sub nom., MCI Telecommunications Corp. v FCC, 765 F.2d 1186 (D.C. Cir. 1985).

[6] In undertaking to deregulate AT&T where it was believed that there were sufficient market forces to offset any residual market power possessed by AT&T, the Commission recognized the different characteristics of different interexchange services, which were also reflected in the various service "baskets" created in connection with the "Price Cap" regulation scheme first formulated and adopted for AT&T in 1989.

geographic rate averaging and rate integration requirements in the context of the new law.

As explained herein, MCI generally agrees with the basic conclusions reached by the Commission in connection with the definition of relevant product and geographic markets, including its tentative determination that, for market power analyses, the interstate, interexchange marketplace should be viewed as one national market. MCI further agrees that, absent evidence of competitive failings, there is no need to evaluate the market in terms of products. What is essential is that the Commission equip itself with the analytical tools necessary to evaluate the nature and extent of the BOCs' market power in connection with their entry into the interstate, interexchange market.

Because LECs continue to possess local bottleneck control within their respective service areas, and because that control can be exploited outside those areas, the Commission should continue to require that LECs establish separate affiliates if they wish to be regulated as non-dominant. However, for BOCs, the standard must be more stringent, given the greater wounds they can inflict on competition by cross-subsidization and other anti-competitive conduct. Specifically, for BOC out-of-region interexchange services, the Commission must require that their offerings be made only via separate affiliates and, then, only under dominant carrier regulation.

Finally, MCI is hopeful that any tension that exists between geographic rate averaging and rate integration requirements, on one hand, and the need to develop and maintain an effective competitive environment, on the other hand, will be accommodated. The Commission thus needs to recognize that these two goals can continue "to peacefully co-exist" as they have in the past. Above all else, however, the overriding public interest in further developing competitive marketplaces must prevail over any lesser policy objectives.

I. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

MCI generally agrees with the basic conclusions that the Commission tentatively adopts in the NPRM with respect to the definition of relevant product and geographic markets. MCI does not object to the general analytical framework in the 1992 Merger Guidelines adopted by the Department of Justice and the Federal Trade Commission.[7]

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[7] NPRM at para. 41. MCI notes that the Guidelines tend to understate the importance of supply-side substitutability in defining product and geographic markets. As the Commission has recognized and the courts have confirmed, supply substitutability, as well as demand substitutability, is an important factor in defining the relevant product and geographic market. (E.g., SBC Communications, Inc. v. FCC, 56 F.3d 1484, 1493-94 (D.C. Cir. 1995.) If a provider of service A can easily expand its offerings to include service B, services A and B should be treated as part of the same product market even if consumers would not substitute A and B, because a provider of service B cannot profitably increase the price of service B without attracting new entry. Likewise, if a provider of a service in region A can easily start to provide the service in region B, regions A and B should be treated as part of the same geographic market because a provider in region B cannot

MCI agrees that some interexchange services have characteristics indicative of discrete product markets, but that the Commission "need not address the issue of delineating the boundaries of specific product markets, except where there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services."[8] And, MCI agrees that "[f]or purposes of market power analysis, [the Commission should] treat interstate, interexchange calling generally as one national market."[9]

As the Commission recognizes, it must define relevant product and geographic markets because it must determine whether particular carriers possess market power. The appropriate type and degree of regulation depends, to a significant extent, on whether a carrier possesses market power, and market power cannot be analyzed without defining the relevant product and geographic market. As a result of its determination that AT&T is not a dominant carrier in the domestic, interstate market, the Commission is correct in

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profitably increase its price in that region without attracting new entry. The Guidelines recognize this principle, but consider it under the rubric of measuring market shares and evaluating entry. See NPRM at paras. 47, n.109 (quoting Guidelines: "'[s]upply substitution factors -- i.e., possible production responses -- are considered . . . in the identification of firms that participate in the relevant market and the analysis of entry'").

[8] NPRM at paras. 41 and 47.

[9] Id at para. 42. That this may change is clearly possible, given the near-term radical changes that will be taking place in the subject market.

observing that the critical market power issue before it now is "whether the BOCs possess market power with respect to the provision of interLATA services in areas where they provide local access service," which can be applied outside these areas.[10]

As the Commission notes, the market power that the BOCs can exercise over interstate, interexchange services arises out of their control over the provision of exchange access.[11] BOC dominance of exchange access markets is a common denominator for all interexchange services because all interexchange services are dependent on access through the incumbent LEC at both the originating and terminating end. Consequently, the BOCs have the power to control price and output of all interexchange services in their region and to exploit their dominant positions to act in anti-competitive ways. For example, any characteristics that might make 800 services or analog private line services separate product markets[12] do not distinguish them from other interexchange services for purposes of BOC market power: 800 services and analog private line services are equally dependent on BOC access.

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[10] Id. at para. 40. (footnote omitted). See, also, pp. 15-16, infra.

[11] NPRM at para. 53.

[12] See NPRM at para. 40, n. 99 and para 44, n. 106.

Accordingly, the Commission should take into account the above considerations in evaluating matters pertaining to geographic and product markets in the domestic interstate, interexchange market, and it should remain flexible in terms of preparing to deal with a market likely to be in transition in the near future.

II. SEPARATION REQUIREMENTS FOR OUT-OF-REGION SERVICES

A. INTRODUCTION

Part V of the NPRM addresses the issue of whether separation requirements should continue to be imposed on "out-of-region" interstate, interexchange services provided by LECs and BOCs as a condition of "non-dominant" regulatory treatment for such services. The NPRM notes that the Commission has already sought comment on this issue for BOCs in the BOC Out-of-Region proceeding[13] and that its proposal in that docket was based on the Competitive Carrier rules for such services provided by LECs.

In the Competitive Carrier proceeding, the Commission, over a period of several years, modified its regulation of carriers lacking market power. Dominant carriers are subject to either price cap or rate-of-return regulation, whichever is applicable, including the imposition of cost support requirements, and must file tariffs on 14, 45 or 90

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[13] Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21.

days' notice. Non-dominant carriers are free of rate or earnings regulation and may file tariffs on one day's notice, without cost support and with a presumption of lawfulness. The Commission determined in Competitive Carrier that interstate, interexchange services provided directly by LECs on an unseparated basis would be regulated as dominant carrier services on account of the LECs' local bottleneck control.

Where LECs provided such services through a separate affiliate, however, those services would be treated as non-dominant, because such separation would provide "protection against cost-shifting and anti-competitive conduct" that might otherwise result from the LECs' local bottleneck control.[14] In order to qualify for non-dominant treatment, the LEC interexchange affiliate must maintain separate books of account, not jointly own transmission or switching facilities with its affiliated local exchange company and must acquire any services from its affiliated local exchange company at tariffed rates, terms and conditions.[15]

In the BOC Out-of-Region proceeding, the Commission proposed the same approach for BOC out-of-region interexchange services on an interim basis. In its BOC Out-

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[14] NPRM at para. 58 (quoting Fifth Report, 98 FCC 2d at 1198-99).

[15] NPRM at para. 57 (citing Fifth Report, 98 FCC 2d at 1198).

of-Region Comments,[16] which are incorporated by reference herein, MCI explained that, on account of the BOCs' continuing local bottleneck control and the ability to apply that control out of region in the interexchange service market, their out-of-region interexchange services should be provided only through separate affiliates and should be regulated as dominant carrier services.

In the NPRM, the Commission now questions whether the Competitive Carrier separation requirements should be maintained as a condition of non-dominant treatment for LEC out-of-region interexchange services and whether, if those requirements are lifted for LEC out-of-region services, the same regulatory treatment should be applied to BOC out-of-region services. The regulatory treatment of LEC and BOC in-region interexchange services are to be addressed in a subsequent proceeding.[17]

MCI submits that, because the LECs continue to possess local bottleneck control within their service regions, and because that control can be exercised outside their regions, the current Competitive Carrier separation rules should be maintained for all non-BOC LEC interexchange services, both in and out-of-region. Moreover, irrespective of the

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[16] Comments of MCI Telecommunications Corporation, Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Service, CC Docket No. 96-21, filed March 13, 1996.

[17] NPRM at paras. 61-62.

ultimate policy to be applied to LEC interexchange services, BOC out-of-region interexchange services should be subject to the stringent conditions proposed in MCI's BOC Out-of-Region Comments on account of the greater degree of injury that can arise from BOC cross-subsidies and anti-competitive conduct.

B. LEC OUT-OF-REGION INTEREXCHANGE SERVICES SHOULD CONTINUE TO BE GOVERNED BY THE COMPETITIVE CARRIER SEPARATIONS RULES

1. There is No Reason to Reconsider the Regulatory Treatment of LEC Interexchange Services at This Time

As the NPRM points out, the BOC Out-of-Region proceeding was launched in response to Section 151 of the new law, which adds a new Section 271(b)(2) to the Communications Act of 1934, 47 U.S.C. §151 et seq., authorizing BOC entry into out-of-region interexchange services when all of the conditions specified in the new section have been met. Previously, on account of the interexchange ban in the Modification of Final Judgment in the AT&T divestiture case (MFJ),[18] BOC provision of interexchange services had been almost entirely a hypothetical issue, meriting only a footnote in one of the Competitive Carrier orders.[19] Now that BOC participation in

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[18] United States v. American Telephone & Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd mem. sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

[19] Fifth Report, 98 FCC 2d at 1198, n.23.

out-of-region interexchange services is a reality, it is incumbent on the Commission to devote more attention to the appropriate regulatory treatment of such services.

In the case of LEC out-of-region interexchange services, however, the Commission's previous review in Competitive Carrier was extensive, and nothing in the legal landscape has changed that would require a new analysis. LECs have always been allowed to provide interexchange services, and GTE and others have done so for many years. With one exception,[20] nothing in the new law affects the LECs' authority to provide such services or, at least in the immediate future, the conditions under which such services are provided.[21] Nothing has occurred recently that creates any particular urgency as to the treatment of LEC out-of-region interexchange services, and the separation requirements are not especially burdensome. There is, therefore, no need for this diversion from the Commission's high-priority task of implementing the 1996 Act in a manner that facilitates competition. The Commission should close out this portion of the NPRM and consider the BOC out-of-region issue in the BOC Out-of-Region proceeding.

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[20] The 1996 Act effectively abolished the separate subsidiary requirement for GTE.

[21] The interconnection requirements of Sections 251 and 252 of the Communications Act of 1934, added by Section 101 of the 1996 Act, apply to all carriers, but those requirements will not begin to have an impact on the competitiveness of local exchange or access service for some time to come.

2. The LECs Still Possess Local Bottleneck Control, Which Can Be Leveraged Into Out-of-Region Interexchange Services

The LECs' dominance derives not from their absolute sizes or their shares of competitive markets, but, rather, from their control of the local exchange network facilities needed by all other service providers. As the Commission explained in the First Report in Competitive Carrier:

> An important structural characteristic of the marketplace that confers market power upon a firm is the control of bottleneck facilities. A firm controlling bottleneck facilities has the ability to impede access of its competitors to those facilities.... We treat control of bottleneck facilities as prima facie evidence of market power requiring detailed regulatory scrutiny.[22]

The reason for the Commission's approach is obvious. As set forth in Competitive Carrier, the BOCs' and other LECs' local bottleneck power would allow them to discriminate against competitors dependent upon access to the local network and to shift costs.[23]

There have been no marketplace changes since Competitive Carrier that have appreciably loosened the LECs' bottleneck control. They still retain overwhelming market dominance in local exchange and access services within their service territories. Moreover, that dominance can easily be

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[22] First Report, 85 FCC 2d at 21, para. 58 (emphasis added).

[23] First Report, 85 FCC 2d at 21-22; Fifth Report, 98 FCC 2d at 1195-99.

leveraged into out-of-region interexchange services against interexchange carriers (IXCs) competing on a nationwide basis.

Although the new law lays the groundwork for the development of local competition, that has not yet happened. The BOCs and other LECs have been forecasting catastrophic losses from such competitive developments for some time now, but those predictions are still greatly premature. Assistant Attorney General Anne K. Bingaman stated in testimony presented in early 1994 before the House Subcommittee on Telecommunications and Finance:

> Local telephone markets are in greatest need of added competition for they are still monopolized by local companies in the old Bell System.... the Bell Operating Companies (BOCs) in most areas of the country still have a lock on local telephone traffic, carrying more than 99 percent of all local calls in their service areas.[24]

The same can be said of the LECs. More than a year after Assistant Attorney General Bingaman's testimony, in March 1995, the Commission confirmed that the situation had not changed appreciably. Geraldine Matise, then Chief of the Tariff Division, stated that there could be no question that the "LECs continue to exercise a substantial degree of market power in virtually every part of the country and

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[24] Statement of Anne K. Bingaman, Assistant Attorney General, Antitrust Division, United States Department of Justice, before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives, January 27, 1994.

continue to control bottleneck facilities."[25] As the Commission stated at that time, "the competitive access industry is still very small."[26] Today, the BOCs and independent LECs still carry all but a small sliver of interstate access traffic. Competitive access providers (CAPs) have taken only about 1.3 percent of the total access market, based on MCI's own experience. The annual increase in LEC access revenues still dwarfs total CAP annual revenues.[27] The fiber deployed by CAPs and network equipment installed by CAPs are still a small fraction of the fiber and equipment installed by the LECs.[28]

Of special significance here is the fact that this local bottleneck power can be exploited beyond the boundaries of a LEC's service area. As explained by the MFJ Court in the context of BOC interexchange services, because the interexchange market is national in scope, a BOC

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[25] Presentation of Geraldine Matise at Commission Agenda Meeting, March 30, 1995, in Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1.

[26] FCC News, Report No. 95-__, dated March 30, 1995, at 6.

[27] See, e.g., Texas PUC, Scope of Competition in Telecommunications Markets, at 28-35 (January 13, 1995)(total interstate CAP revenues were one-tenth of one percent of LECs' total interstate access revenues in Texas from mid-1993 to mid-1994, while LEC access revenues grew over ten percent).

[28] See J.M. Kraushaar, FCC, Fiber Deployment Update: End of Year 1994 at 22, 35 (July 1995). Compare Connecticut Research, Local Telecommunications Competition at Table III-1 (1994) with J.M. Kraushaar, FCC, Infrastructure of the Local Operating Companies Aggregated to the Holding Company Level at 26 (April 1995).

providing interexchange service to customers everywhere but in its own local service region can still use its bottleneck power to discriminate against other IXCs dependent on it for access within its region, "thereby damaging the competitor's service and reputation on a national basis." United States v. Western Electric Co., 1989-1 Trade Cas. (CCH) ¶68,619 at 61,266 (D.D.C. June 13, 1989). See also other cases cited in MCI's Comments to the Department of Justice concerning Southwestern Bell's request for an MFJ waiver to provide out-of-region interexchange service, which is appended hereto and incorporated herein as an Attachment.[29] Since an IXC has to use a BOC's access services for virtually all of its originating and terminating traffic, the BOC would have little to lose by discriminating against the IXC within its region in order to afford an advantage to its own interexchange services originating outside its region.

Moreover, some of the out-of-region traffic the BOCs will be providing will terminate in-region. As explained in Appendix A, the ability to terminate interexchange calls within region raises many of the same bottleneck abuse issues that arise in connection with originating service. The interface between the IXC and the BOC at the terminating

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[29] It is no answer that the recent legislation supplants the MFJ. The rationale of the cases cited in the Attachment is based on the underlying market facts of the BOC's bottleneck control, which continues under the new law and will only change over time as the interconnection and other requirements of the 1996 Act are implemented and result in effective local service competition.

end of an interexchange call is becoming increasingly sophisticated, particularly with respect to signalling information. As a result, BOCs have the ability to discriminate in favor of their long distance operations in providing new interfaces at the terminating end of interexchange calls.

The same analysis is equally applicable to LEC out-of-region interexchange services. The LECs' technical abilities to discriminate are equal to the BOCs' abilities. It should be noted that the BOC and LEC facilities used to terminate interexchange calls that originate out-of-region not only are similar to, but also can be the same as, the facilities the BOCs and LECs use to provide in-region monopoly services, including intraLATA toll and local services (such as the official services networks). This similarity, and in some cases, identity, of facilities used for monopoly and interexchange services greatly aggravate the risks of cross-subsidization and discrimination on the terminating end of such calls -- a portion of the call that accounts for half of the access charges associated with such calls.

There is a wide range of possible cost-shifting and discrimination that arises from LEC provision of out-of-region interexchange services. Cross-subsidies can take the form of a conferring of a variety of benefits derived from the LEC's monopoly operations on its interexchange services

without adequate compensation. Many such benefits involve company-wide costs that, by their nature, are common to local exchange and out-of-region interexchange services.

All of these cost or asset-shifting techniques are hard to detect and not deterred by price cap regulation. Whether or not the LEC's monopoly rates can be raised to absorb additional costs under price cap regulation, the conferring of monopoly-derived benefits on the LEC's interexchange services unfairly subsidizes those services. Since other IXCs have to obtain the same inputs at inflated market rates, the subsidizing of the LECs' interexchange services results in unreasonable discrimination, injuring interexchange competition. Moreover, under the Commission's price cap scheme, the LECs can always choose a lower productivity factor, with sharing, for the following year, thereby sweetening their cross-subsidy incentives, and many states also have not implemented a "pure" price cap regime for local exchange and intrastate access services.

The LECs can also discriminate in a variety of ways that take advantage of their local monopoly, such as slow service provisioning; delayed information about, or roll-out of, new technologies; less responsive maintenance and customer service; or poor connections. They can exploit information obtained in their capacity as local service providers for out-of-region interexchange marketing, including such information as validation databases. They

can also manipulate the price or other terms and conditions of the termination of traffic, including limiting access to certain signalling information associated with call termination. While the interconnection and unbundling requirements in Section 251 of the 1996 Act may prohibit these forms of discrimination in theory, enforcement will be difficult in practice, and incumbent LECs are resisting full and prompt implementation of these requirements. The only effective protection against such discrimination is not regulation but, rather, actual effective competition in local exchange and exchange access services.

IXCs facing discrimination by a LEC have no practical alternatives for access within that LEC's service territory, since local exchange and access competition is only just beginning to develop, especially as to residential users. Such competition is especially slow to develop in the rural and suburban areas disproportionately served by LECs, such as GTE. In view of the LECs' leverage, such matters as the LECs' low interexchange market shares and the presence of established interexchange rivals are beside the point It is not especially relevant that many LECs are not as large as the largest IXCs, since antitrust cases have recognized that firms in a position to raise their rivals' costs will do so and that such behavior injures competition, irrespective of the ability or lack of ability to drive those rivals from

the market.[30] As long as the LECs are in a position to raise the IXCs' costs, they will do so, irrespective of their relative sizes.

The Commission's recognition of the LECs' local dominance and the leverage such dominance provides over much larger IXCs is reflected in the treatment of BOC and other LEC interexchange services in the Competitive Carrier proceeding. There, the Commission found the LECs dominant in their unseparated offering of interexchange services in spite of their low interexchange market shares.[31] The advantages conferred by the local bottleneck[32] outweighed all other factors bearing on interexchange market power, and that continuing bottleneck power applies to out-of-region interexchange services as well.

3. The LECs' Continuing Bottleneck Power and Abilities to Apply That Power Out-of-Region Require That the Competitive Carrier Separation Rules Continue to Govern All LEC Interexchange Services

Since the LECs' bottleneck control has not appreciably diminished since Competitive Carrier, there is no reason to

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[30] See Ball Memorial Hospital, Inc. v. Mutual Hospital Insurance, Inc., 784 F.2d 1325, 1339 (7th Cir. 1986).

[31] Compare Fourth Report, 95 FCC 2d at 575 & n.69 (low LEC affiliate interexchange market shares) with Fifth Report, 98 FCC 2d at 1198 (need for separation of LEC interexchange operations from its local exchange network).

[32] First Report, 85 FCC 2d at 21-23; Fifth Report, 98 FCC 2d at 1195-1200.

relax the separation requirements imposed as a condition of non-dominant treatment for LEC interexchange services, in or out-of-region. As explained above, Competitive Carrier demonstrates that the LECs' dominance is not diminished by the happenstance of a small LEC market share in the competitive service for which network access is needed.

In the Fourth Report and Fifth Report, however, the Commission concluded that separation of a LEC's interexchange operations from the LEC's network facilities would help to minimize the cross-subsidization and access discrimination against competing IXCs that might otherwise result from the LECs' abuse of their bottleneck control.[33] Any joint provision of local and interexchange services, however, would subject the interexchange services to dominant carrier regulation.[34]

The equal access requirements that the Commission imposed on the LECs[35] cannot be considered to have loosened their bottleneck control. The equal access requirements imposed on the BOCs by the MFJ were never considered to have altered the BOCs' bottleneck control and resulting dominance

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[33] Fourth Report, 95 FCC 2d at 575-79; Fifth Report, 98 FCC 2d at 1195-1200.

This requirement has worked well for the past decade, and there is no evidence that it has interfered in any way with the ability of these LECs to compete legitimately in the interstate, interexchange market.

[34] See also, Fourth Report, 95 FCC 2d at 579.

[35] MTS and WATS Market Structure Phase III, 100 FCC 2d 860, 869-80 (1985), recon. denied, 59 RR 2d 1410 (1986).